

In the Matter of Application Serial No. 78551627
for the Mark of “WIMAX IN A BOX”
Filed on January 21, 2005
Published for Opposition in the Official Gazette of May 8, 2007

WIMAX FORUM, a California Corporation

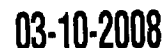
Opposer,

V.

AIRTEGRITY WIRELESS, INC., a Nevada Corporation

Applicant.

Opposition No. 91180535



RESPONSE TO NOTICE OF TRIAL DATES RESET

U.S. Patent & TMOffc/TM Mail Rcpt Dt. #30

COMES NOW the Applicant, AirTegrity Wireless, Inc. (“Applicant”), and files its Response to Trial Dates Reset Notice, as follows:

- 1) On 12 December 2008 by 1700PST, the Applicant submitted its Answer to Opposition 91180535 (and superseded Opposition 91180534). A chronology of subsequent communication regarding this Answer, and clarification of the proper correspondence addresses for the Applicant, are provided below for incorporation into the record.
- 2) On 28 December 2008 at 0649PST, a Notice of Default authored by Angela Campbell, Paralegal Specialist for the USPTO, was received by email to Greg Felton of the Applicant.
- 3) On 08 January 2008 at 0920PST, Mr. Felton attempted to make contact with Interlocutory Attorney Cheryl Butler who was listed as Interlocutory Attorney on the original opposition, 91180534, and who had provided guidance (including the TTAB address, which was different than that shown on the uspto.gov website) prior to AirTegrity Wireless' submission of its answer on 12 December 2007. A recording on her telephone indicated she would be out of the office until 15 January 2008.

- 4) The same date at 0922PST, Mr. Felton called Paralegal Specialist Angela Campbell who: a) Confirmed that the address given to us by Cheryl Butler was correct; b) Confirmed the answer was not in the USPTO TTAB files (for cases 91180534 or 91180535); c) Asked if the Company had received a confirmation of receipt postcard (it had not); d) Suggested that a copy be faxed to her at 571 273 4260.
- 5) The same date at 0935PST, a fax of the 12 December 2007 Answer with the following cover was sent to Ms. Campbell. This has been filed on the USPTO site as "D'S RESPONSE TO MOTION" dated 08 January 2008.

"Ms. Campbell,

As I indicated on the phone this morning, the attached Answer, including Certificates of Service and Mailing, was mailed First Class via the US Postal Service on December 12, 2007 to both the Trademark Trial and Appeal Board, PO Box 1451, Alexandria, VA 22313-1451 and to HARVEY SISKIND LLP, D. PETER HARVEY (SBN 55712), Four Embarcadero Center, 39th Floor, San Francisco, CA 94111. Note that the TTAB address used was not the one on the Web but a replacement given to me on the telephone on 12/12/07 by Cheryl Butler (Interlocutory Attorney on Opposition 91180534 which was subsequently replaced by 91180535).

The mailed copies were signed. The attached is directly from the source file (so unsigned). Greg Phillips, CEO, is traveling until Friday at which time I could have him sign another copy and FAX that if necessary.

Please confirm you have received this document and let me know if any further action is required by us.

Thank you,

Greg Felton
Chief Operating Officer
greg.felton@airtegrity.com
PH: 775 588 8800 x1001
CELL: 775 313 8513
FAX: 775 580 8580"

- 6) On 14 January 2008 at 1050PST, having not received confirmation of fax receipt, Mr. Felton called Ms. Campbell and found her voicemail indicated she would be out of the office until January 15th. He left a message asking her to return his call.
- 7) On 29 January 2008 at 1115PST, Mr. Felton called Ms. Campbell and left a message on her voicemail asking her to return his call. Ms. Campbell returned Mr. Felton's call at 1135PST: a) She believed she had returned his 14 January call; b) She received the fax; c) She indicated, "You really need to be talking to Tina Craven, she's the paralegal in this case, her number is 571 272 9522. Give her a call and let her know what's going on with this case."
- 8) On 29 January 2008 at 1137PST, Mr. Felton called Ms. Craven and left a voicemail message including Opposition number, case history, and his work and cell phone telephone numbers.
- 9) On 07 February 2008 at 1303PST, having not heard back from Ms. Craven, Mr. Felton called and left another voicemail message with the same content including "This case is festering. I need to hear back from you."
- 10) On 12 February 2008 at 0913PST, having not heard back from Ms. Craven, Mr. Felton called and left another voicemail message with the same content including his intent to call Paralegal Specialist Angela Campbell.
- 11) On 12 February 2008 at 0916PST, Mr. Felton called Angela Campbell and she: a) Pulled up the record of this case; b) Indicated "I see your paper, I don't why she hasn't returned your calls. I sent the email to her. Let me try to get in touch with her, see what she's going to do with this case. Either she or I will be giving you a call back."
- 12) On 13 February 2008 at 0633PST, Mr. Felton received an email message from Interlocutory Attorney Frances S. Wolfson indicating the Notice of Default had been set aside and that "applicant must file fully-executed copies of both its response to the notice of default and its answer." This message was added to the USPTO record online as "TRIAL DATES RESET."
- 13) On 22 February 2008, Mr. Felton received a copy of the aforementioned notice via U.S. Post.

- 14) On 25 February 2008 at approximately 1000PST, Mr. Felton called Ms. Frances Wolfson (at 571-272-4323) and left a voicemail message indicating the Opposition Number, that he had received her Notice of Default, and that he requested her FAX number so that he could send her a backup copy of the response to hopefully avoid the situation which occurred with the Answer. He indicated he would not send the response until hearing from her.
- 15) On 26 February 2008 at 0820PST, Mr. Felton received a call from Ms. Frances Wolfson indicating, "It looks like there's a signed copy of the Answer in the folder, stamped 12/14/07. Go back online and look. Let me know if you still have a problem." Ms. Wolfson did not provide her FAX number but instead indicated, "The best way (to submit documents) is not by fax, it's by ESTA, the online filing system" She provided instructions to go online to uspto.gov, select Trademarks, then TTAB and that Mr. Felton would find options for viewing a proceeding and for filing documents online.
- 16) Mr. Felton looked online and found the Prosecution History which clearly indicates the Answer was received by the USPTO on 14 December 2007, two days after it was mailed by the Applicant, but it was not posted to the record until over 2 months later.

Prosecution History

| # | Date | History Text | Due Date |
|----------|------------|---|------------|
| <u>7</u> | 12/14/2007 | <u>ANSWER</u> | |
| <u>6</u> | 02/13/2008 | <u>TRIAL DATES RESET</u> | |
| <u>5</u> | 01/08/2008 | <u>D'S RESPONSE TO MOTION</u> | |
| <u>4</u> | 12/28/2007 | <u>NOTICE OF DEFAULT</u> | |
| <u>3</u> | 11/02/2007 | PENDING, INSTITUTED | |
| <u>2</u> | 11/02/2007 | <u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u> | 12/12/2007 |
| <u>1</u> | 11/02/2007 | <u>FILED AND FEE</u> | |

- 17) The Trial Dates Reset notice indicates, "Applicant must file fully-executed copies of both its response to the notice of default and its answer." As the fully executed ANSWER dated and sent 12 December 2007 has been located and added to the record by the USPTO, the Applicant has not included another copy of this document. The Response to Default fax cover is included in this document, which is executed, which the Applicant believes fulfills the request.

18) The U.S. Postal Service does not deliver to street addresses in the Stateline, Nevada area. Addressing U.S. Post correspondence to street addresses can result in delays, and sometime in complete failures of delivery. The following correspondence addresses for AirTegrity Wireless, Inc. should be used for all future correspondence:

By U.S. Mail:

AirTegrity Wireless, Inc.
P.O. Box 5188
Stateline, NV 89449-5188

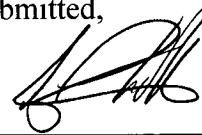
By Courier:

AirTegrity Wireless, Inc.
276 Kingsbury Grade, Suite 206
Stateline, NV 89449-5188

Dated: March 03, 2008

Respectfully submitted,

By:



Gregory W. Phillips
AirTegrity Wireless, Inc.
PO Box 5188
Stateline, NV 89449-5188
Telephone: (775) 588-8800 x1001
Facsimile: (775) 580-8580
Email: greg.phillips@airtegrity.com

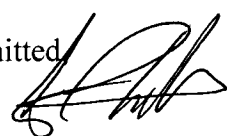
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following via United States mail, postage prepaid, this 3rd day of March, 2008:

HARVEY SISKIND LLP
D. PETER HARVEY (SBN 55712)
Four Embarcadero Center, 39th Floor
San Francisco, CA 94111

Respectfully submitted

By:



Gregory W. Phillips

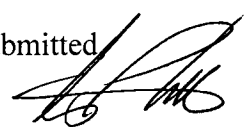
CERTIFICATE OF MAILING

I HEREBY CERTIFY that this correspondence is being faxed attention Ms. Frances S. Wolfson at 571 273 4260 as well as deposited with the United States Postal Service with sufficient postage as First-class mail in an envelope addressed to the following this 3rd day of March, 2008:

Commissioner for Trademarks
Trademark Trial and Appeal Board
PO Box 1451
Alexandria, VA 22313-1451

Respectfully submitted

By:



Gregory W. Phillips